

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
BIRMINGHAM STEEL CORPORATION,)	Bankruptcy No. 02-11586 (LK)
et al.,)	
)	
Debtors,)	
)	
<hr/>		
SEATTLE CITY LIGHT,)	
)	
Appellant,)	
)	
v.)	Civ. No. 03-470-SLR
)	
JAR ACQUISITION CORP., ET AL.,)	
)	
Appellees.)	

MEMORANDUM ORDER

At Wilmington, this 8th day of January, 2004, having reviewed the appeal of the bankruptcy court's decision of April 4, 2003 in the above captioned case and the memoranda submitted therewith;

IT IS ORDERED that the decision of the bankruptcy court is affirmed and the appeal denied for the reasons that follow:

1. On June 3, 2002, the debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware. On September 13, 2002, debtors filed a plan of reorganization which was intended to be funded by a sale of debtors' assets to JAR

Acquisition Corp., Nucor Corporation, and Nucor Steel Seattle, Inc., and their assigns (collectively "Nucor"). The sale of assets was authorized by the confirmation of debtors' Third Amended and Restated Joint Plan of Reorganization (the "Plan"). (D.I. 5, ex. D) The asset sale agreement between debtors and Nucor provided that debtors would assume and assign select executory contracts and unexpired leases. (Id., ex. E) On December 9, 2002, debtors sold substantially all assets to Nucor for approximately \$600 million. The Plan's confirmation date is September 17, 2002. (Id., ex. F)

2. At the time of filing, appellant and debtors were parties to, among other contracts, an Energy Savings Agreement dated October 3, 2001 ("Energy Savings Agreement"). (Id., ex. I) That contract provided that debtors would install certain energy conservation equipment at Birmingham Steel's facility. Under the Energy Savings Agreement, appellant is required to pay debtors \$436,480.

3. On August 19, 2002, debtors filed a motion to assume/reject and assign executory contracts and unexpired leases. That motion was subsequently authorized on September 19, 2002 and, by its terms, all contracts not assumed would be rejected effective December 9, 2002 ("Effective Date"). Debtors' August 19, 2002 motion provided for the assumption of two electricity supply contracts between debtors and appellant, but

did not expressly provide for the assumption of the Energy Savings Agreement.

4. On December 6, 2002, prior to the Effective Date, debtors' filed a motion to assume and assign the Energy Savings Agreement. (Id., ex. G) On January 6, 2003, the court entered an order granting the assumption and assignment of the Energy Savings Agreement. (Id., ex. A) Appellant appeals from the January 6, 2003 order.

5. In undertaking a review of the issues on appeal, the court applies a clearly erroneous standard to the bankruptcy court's findings of fact and a plenary standard to that court's legal conclusions. See Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercises 'plenary review of the [bankruptcy] court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991) (citing Universal Minerals, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 101-02 (3d Cir. 1981)). The district court's appellate responsibilities are further informed by the directive of the United States Court of Appeals for the Third Circuit, which effectively reviews on a de novo basis bankruptcy court

opinions. In re Hechinger, 298 F.3d 219, 224 (3d Cir. 2002); In re Telegroup, 281 F.3d 133, 136 (3d Cir. 2002).

6. The court first notes that it is clear and largely indisputable that debtors' failure to list the Energy Savings Agreement on the schedule of executory contracts to be assumed was the result of a clerical oversight. Indeed, there is no other plausible explanation why debtors would reject an executory contract which entitled the estate to a payment of over \$400,000.

7. Appellant first contends that the bankruptcy court was without subject matter jurisdiction, as the debtors' plan was confirmed on September 17, 2002 and, by its terms, all executory contracts not assumed were deemed rejected. Appellant's argument is without merit. 28 U.S.C. § 1334 provides for the exclusive jurisdiction of all cases arising under the Bankruptcy Code in the district court. See In re Hall's Motor Transit Co., 889 F.2d 520, 522 (3d Cir. 1989). According to the Third Circuit, the proper test for determining whether a case arises under the Bankruptcy Code is whether the case "could conceivably have any effect on the estate being administered in bankruptcy." Id. (quotations omitted). In accordance with 28 U.S.C. § 157, matters arising in bankruptcy are referred to the bankruptcy court.

8. In the present case, debtors' motion to assume the contract could not be characterized as anything but a core

proceeding, and the bankruptcy court had jurisdiction. Notwithstanding the date of the order, the motion was properly filed before the Effective Date and while the Energy Savings Agreement remained part of the debtors' estate. However, even after the Effective Date, the Plan's express retention of jurisdiction, given even the most narrow interpretation, would include pending motions pertaining to the disposition of debtors' assets. The cases cited by appellant in its brief provide no support for the proposition that a bankruptcy court does not retain jurisdiction over a pending motion to assume an executory contract. In a complex Chapter 11 case, it is not uncommon for there to be clerical errors and, therefore, a need for appropriate corrections to be entered; these are clearly matters arising under the Bankruptcy Code and directly affecting a debtors' estate. Consequently, the court concludes that the bankruptcy court had jurisdiction to decide debtors' motion of December 6, 2002.

Sue L. Robinson
United States District Judge